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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

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INTRODUCTION

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in resolution S-3/1 of 25 May 1994, the Special Rapporteur on the human rights situation in Rwanda has made three visits to that country and neighbouring States. The purposes of these missions were:

(a) The first (9-20 June 1994), in accordance with the Commission's request, "to visit Rwanda forthwith" and "to report on an urgent basis" to its members, submitting a preliminary report within four weeks of the adoption of the resolution. That report (E/CN.4/1995/7 and Corr.1) was issued on 28 June 1994;

(b) The second (28-31 July 1994), to assess the situation in Rwanda following the victory of the Rwandese Patriotic Front (FPR) and to ensure that reprisals would not be inflicted on the Hutu. That report (E/CN.4/1995/12) was issued on 12 August 1994;

(c) The third (16-25 October 1994), to update, supplement and clarify the information contained in the first two reports. That report (E/CN.4/1995/70) was issued on 11 November 1994.

The present report endeavours to summarize the information contained in the three previous reports.

2. The Special Rapporteur wishes at this point to reiterate his sincere thanks to all persons, both Rwandese and foreigners, and United Nations officials who supported him in the execution of these three missions. He wishes to express particular thanks to the Centre for Human Rights and the Committee of Experts on Rwanda for the assistance provided to him by the former in facilitating his work, and for the cooperation he received from the latter in the performance of his mission.

3. It is apparent from these various missions and inquiries carried out that Rwanda has been and remains the scene of serious violations of human rights. In making this observation, however, a distinction should be made between violations committed during and after the hostilities.

I. VIOLATIONS COMMITTED DURING THE HOSTILITIES

4. The attack which cost the lives of Juvénal Habyarimana, President of the Rwandese Republic, Cyprien Ntayamira, President of the Republic of Burundi, and several persons in their entourage occurred on 6 April 1994 in what was already a tense and explosive social and political situation. It undoubtedly constituted the spark which set off the massacre of civilians. These massacres were followed by the armed conflict between the governmental forces and the Rwandese Patriotic Army. The hostilities and, more particularly, the massacres gave rise to violations of human rights.

A. The massacres

5. It is true that the people of Rwanda have experienced several massacres, but those perpetrated during the hostilities are without precedent in the history of the country. They are in fact unique in their extent, their planning and their horrific nature.

1. Their extent

6. The extent of the massacres has been unequalled in space and in time; they spread like wildfire throughout the country from 6 April up to the end of the hostilities and even beyond that date.

7. Although these massacres are attributable to the two warring parties, who have combined civil war with looting, far more have been committed by the interim Government than by the Patriotic Front.

8. The results have been completely catastrophic: in addition to the massive destruction of property and crops, the loss of human life has been extremely heavy, possibly reaching 1 million.

2. Their planning

9. There now seems to be little doubt that the massacres were planned. This is the conclusion reached from a number of consistent indications, not to say evidence, including:

(a) The campaign of incitement to exterminate the Tutsi orchestrated by both the public authorities and the media, including Radio Télévision Libre des Milles Collines (RTLM). Several audio cassettes of broadcasts by Radio Rwanda and RTLM have been made available to the Centre for Human Rights;

(b) The distribution of weapons to the civilian population, and more particularly to members of the militias;

(c) The exceptional speed of events at the outset: roadblocks were set up all over Kigali just 30-45 minutes after the assassinations, even before they had been reported on the radio;

(d) The "screening" carried out at the roadblocks by militiamen and soldiers, and the lists drawn up by the public authorities with the aim of identifying Tutsi, after which they were immediately executed.

3. Their horrific nature

10. The horrific nature of the massacres is apparent from the way in which the Tutsi were killed: in most cases they were attacked with machetes, axes, cudgels, iron bars, etc. until they breathed their last.

11. Moreover, the massacres were systematic and spared nobody, not even babies. The victims were hunted down even in their final refuge: orphanages, hospitals and churches.

B. Violations of human rights

12. The hostilities have given rise to grave, massive and systematic violations of human rights; it is important to analyse the nature, causes and perpetrators of these violations.

1. Their nature

13. The charges are threefold: the genocide of the Tutsi, the assassination of the Hutu and other violations of human rights.

(a) The genocide of the Tutsi

14. From the definition of the crime of genocide given in article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (see E/CN.4/1995/7, para. 44), it is apparent that this crime has three constituent elements which might be summarized as follows: a criminal act, "committed with intent to destroy, in whole or in part," a particular group "as such".

15. There does not seem to be any doubt about the first condition, in view of the massacres perpetrated and even the cruel, inhuman and degrading treatment. The second is not difficult to establish either, since such a clear and unambiguous intention is contained in the constant incitements to murder put out by the media (particularly RTLM) and reproduced in leaflets. And even if that were not so, the intention could have been deduced from the facts themselves, on the basis of a variety of concordant indications: preparations for the massacres (distribution of firearms and training of members of the militias), number of Tutsi killed and the result of a policy of destruction of the Tutsi. The third condition, on the other hand, requiring that the ethnic group should be targeted as such, raises a problem, because the Tutsi are not the only victims of the massacres, in which Hutu moderates have not been spared. But the problem is more apparent than real, for two reasons: firstly, many witnesses confirm that the screening carried out at roadblocks to check identities was aimed essentially at the Tutsi. Secondly, and above all, the main enemy, identified with the FPR, is still the Tutsi, who is the inyenzi (cockroach), to be crushed at all costs. The Hutu moderate is merely a supporter of the main enemy, and is targeted only as a traitor to his ethnic group, which he dares to oppose.

16. The conditions laid down by the 1948 Convention are thus met, and Rwanda, having acceded to it on 16 April 1976, is required to respect its principles, which would be binding upon it even without any treaty obligation, since they have acquired the force of customary law. In the Special Rapporteur's view, the term "genocide" should henceforth be used as regards the Tutsi. The situation is different in the case of the assassination of Hutu.

(b) The assassination of Hutu

17. The massacres have not spared the members of the Hutu ethnic group, who have not been targeted per se, but for political reasons.

18. On the one hand, the so-called Hutu moderates, with whom certain foreigners are associated by extension, have been massacred by members of the government militias for having associated themselves with the main enemy, thereby betraying their ethnic group. The victims are chiefly human rights activists and political opponents.

19. On the other hand, the so-called Hutu extremists, and in particular the members of the militias, are executed by the Rwandese Patriotic Army in the area controlled by the Rwandese Patriotic Front, notably for their involvement in the massacres.

20. These acts constitute assassinations, and more specifically political assassinations, violating the right to life, which is a fundamental right established by certain conventions binding on Rwanda.

(c) Other violations

21. A number of other fairly diverse, but no less important, rights have also been seriously violated by the parties to the conflict. We would mention the following:

(a) The right to physical and moral integrity, whereby torture and other cruel, inhuman and degrading treatment are forbidden;

(b) International humanitarian law with regard to murders, political assassinations, executions of hostages and other inhuman acts constituting crimes that violate the four Geneva Conventions of 12 August 1949;

(c) Other violations of rights which amount to crimes against humanity because of the assassinations and other inhuman acts committed against the civilian population, and also the acts of persecution for political motives combined with the serious violations of international humanitarian law applicable to armed conflicts.

2. The causes

22. The causes of the hostilities, and more specifically the massacres, are of various kinds: economic, political, social and cultural. Three are immediately apparent and indicative of the situation in Rwanda: the rejection of alternate political power, incitement to racial hatred and impunity.

(a) The rejection of alternate political power

23. The rejection of alternate political power, which typifies French-speaking black Africa in general, takes on a special form in Rwanda, where it has strong ethnic overtones. The reason for what is taking place in Rwanda is not ethnic as such, but political, the aim being the seizure of political power, or rather the retention of power, by the representatives of one ethnic group, previously the underdogs, who are using every means, principally the elimination of the opposing ethnic group, but also the elimination of political opponents within their own group. From this standpoint, the portrayal of the main enemy and their supporters, as mentioned

above, is quite revealing (see para. 15). The resistance to the Arusha Peace Agreements of 4 August 1993 is indicative of this and even of the rejection of simple power-sharing or political coexistence.

(b) Incitement to ethnic hatred and violence

24. Since incitement to ethnic hatred and violence has already been the subject of much comment, it will not be dealt with in detail below. Attention is simply drawn to the fact that, unlike what happened prior to 6 April, the public authorities have openly involved themselves in the perpetration of the massacres of Tutsi by giving clear and unequivocal orders. This would seem to be the case with Mr. Sindikubwabo, President of the Interim Government, who, in a speech at Butaré on 19 April 1994, urged the population to "get to work" in the Rwandese sense of the term by using their machetes and axes.

(c) Impunity

25. Impunity, like incitement to murder, is a recurrent cause of the massacres. No legal action has been taken against the chief criminals, the perpetrators of the earlier massacres, whether they are civilians or members of the armed forces and although they are known to all. On the contrary, some have been promoted while persons who showed humanity and refused to soil their hands have been dismissed.

3. The perpetrators

26. Although it has not been possible to identify by name all those responsible for the atrocities, as far as the authorities or organs involved are concerned responsibility can immediately be apportioned to:

(a) The Rwandese State authorities and, in particular, senior national political figures, such as a number of ministers, various elements of the government security forces such as the Presidential Guard, the Rwandese Armed Forces and the gendarmerie, and certain local authorities, prefects and mayors;

(b) FPR organs, particularly those in charge of military activities;

(c) Private individuals such as members of the militias, leaders of extremist political parties (National Republican Movement for Development and Democracy (MRND) and Coalition for the Defence of the Republic (CDR), and the founders and broadcasters of RTLM;

(d) Certain foreign States, in the light of their interference in Rwandese politics, which remains to be clarified;

(e) The international community and, in particular, the United Nations, whose response to the urgent needs of the population, especially with regard to security and humanitarian assistance, should also be clarified.

27. The chief perpetrators of the massacres have relentlessly continued their acts since the cessation of the hostilities.

II. VIOLATIONS COMMITTED AFTER THE HOSTILITIES

28. This second series of human rights violations actually began during the hostilities and continued after the hostilities had ceased. These violations have two distinct sources: the insecurity in Rwanda and the fate of the refugees and displaced persons.

A. The insecurity in Rwanda

29. In Rwanda, genocide and reprisals are dialectically linked: genocide seems inevitably to lead to reprisals. In the towns of Rwanda, to which the inhabitants and activities are gradually returning, the dead are being mourned but at the same time there is rejoicing whenever a lost relative or friend is found. But by far the greatest concern of the surviving victims, who are deeply shocked, seems to be whether the perpetrators of the genocide will be tried and punished. However, pending the establishment of the international tribunal, people do not hesitate to take the law into their own hands. Hence there are serious violations of human rights, for which the solutions envisaged remain insufficient.

1. Violations of human rights

30. Insecurity, which is again on the increase in Rwanda, is a source of human rights violations, which take the form of serious violations of property rights, the right to personal safety and the right to life.

(a) Violations of property rights

31. For many refugees back in Rwanda, especially those who constituted the old Tutsi diaspora, these violations consist in the illegal occupation of houses and land abandoned by their owners who have fled. When these owners, Hutu for the most part, return and claim their rights, conflicts break out and are in many cases resolved by violent means.

(b) Violations of the right to personal safety

32. These violations mainly take the form of arbitrary arrest and detention. Rwandese prisons are full of people who are awaiting trial for genocide. No arrest warrant or detention order is issued and the persons concerned are kept in places of detention for much longer than the lawful period of police custody. What is worse, persons released by the judicial authorities are rearrested and detained in barracks by the military authorities.

(c) Violations of the right to life

33. These violations are in many cases the result of disappearances of persons and summary executions, not to say massacres, of Hutu. The Government itself acknowledges that members of the armed forces, including officers, have participated in these massacres.

2. Inadequate solutions

34. All the acts committed taken together would appear to constitute reprisals by the victims of genocide. In order to put an end to these violations, the Government has taken a number of measures, which are far from sufficient:

(a) Eviction orders are often flouted and the Government does not have the means to build new housing or distribute land;

(b) The virtual non-existence of genuine administration by the State adds to the difficulties;

(c) Admittedly, more than 100 members of the armed forces have been arrested, but the indiscipline which seems to be rampant in the army does not help matters.

35. Generally speaking, the measures taken cannot in themselves help to assuage the anger and contain the determination of the people to exact revenge; this will be the case until such time as the alleged perpetrators are prosecuted and tried, and for as long as they are able to travel in complete freedom in certain countries and in the refugee camps.

B. The fate of the refugees and displaced persons

36. The hostilities caused an exodus unprecedented in the history of Rwanda which has created the difficult problem of the return of the refugees and displaced persons.

1. The exodus of Rwandese

37. The exodus resulting from the hostilities has been enormous, particularly since it has been twofold in character, the movement of displaced persons within the country being combined with the flight of refugees abroad.

(a) The displaced persons

38. The war and, in particular, the massacres have led to mass population movements within the country. More than 2 million people, fleeing the hostilities, left their hills for other regions where they felt more secure. Some kept constantly on the move on the hills, while others were herded into so-called displaced persons' centres or camps, where they all eked out an extremely difficult existence, dominated by total insecurity - physical and moral insecurity and insecurity as regards their food and health.

39. But as the fighting drew nearer, the camps would empty and some or all of their occupants would simply be massacred. However, large numbers of people were able to flee and settle in the south-west of the country, in the area covered by the former "Operation Turquoise", and did not cross the Zairian frontier.

(b) The refugees

40. The hostilities caused many other Rwandese to leave their country and take refuge in neighbouring States: Zaire, Tanzania, Burundi and Uganda. The situation of these refugees has been deteriorating.

41. At the beginning of the events, it was mainly the massacres which prompted several thousand Rwandese, and particularly the Tutsi, to go into exile. The total number of refugees at that time was close to 1 million. Tanzania gave shelter to the largest number, estimated at 410,000, including 330,000 in the Benaco camp alone. This huge flow of refugees already at that time constituted a risk of political destabilization for the neighbouring States because of overpopulation, the spilling-over of political and ethnic tensions, and insecurity.

42. Towards the end of the hostilities, millions of people, mainly Hutu, fled before the victorious advance of the FPR army and burst across the borders of neighbouring States in search of refuge particularly in Zaire. At the end of July 1994, between 12,000 and 20,000 refugees an hour were arriving in Goma; at that time the number of refugees was estimated at 2.5 million, including 1.2 million in Goma alone. This Zairian city, which was the base for "Operation Turquoise", thus became the principal refugee centre, being larger than the Benaco camp in Tanzania. The overpopulation of Goma, in precarious living conditions, contained the seeds of a human tragedy which made it a unique case. The consequences were predictable: famine was followed by a cholera epidemic and dysentery, which killed several thousand persons. Despite these sufferings, the refugees are reluctant to return to their country because they fear for their lives.

2. The return of the refugees and displaced persons

43. The return of refugees and displaced persons to Rwanda and the hills where they live continues to be the international community's main concern. Unfortunately, their return, which began at the end of the hostilities, is at present being slowed down, if not completely blocked, by the strong pressure being exerted on the refugees and displaced persons - in a very appropriate framework.

(a) Strong pressure

44. This pressure takes the form of the constant threat to persons wishing to return by the old governing group now in exile. It is clear from large-scale campaigns orchestrated by the old ruling group that return will be possible only as a result of political negotiations entailing a general amnesty or, otherwise, a resumption of civil war with the aim of regaining power. Those who do not take the advice offered and return would run the risk of being the first targets in the event of a reconquest of power.

(b) An appropriate framework

45. The framework devised and set up to maintain the pressure and thus block voluntary departures is institutional, political and administrative in nature.

46. The institutional framework involves simply reconstituting in the camps the political and administrative structures that exist in Rwanda, namely, the prefectures, communes and, in some cases, sectors.

47. The system of control of refugees and displaced persons gives the perpetrators of the genocide, through their local representatives, substantial powers:

(a) Registering arrivals in the camps gives them significant powers of control;

(b) The distribution of foodstuffs and other humanitarian supplies places in their hands a food weapon which they use and abuse, bringing the rebels into line and diverting stocks of food which are sold on the markets of receiving countries;

(c) The imposition of punishment, with exercise of the right of life or death, enables mayors, militiamen and bandits to impose gun law, creating an atmosphere of total and permanent insecurity in the camps.

48. The solution to the problem of the return of the refugees undoubtedly lies, as the Secretary-General of the United Nations has envisaged, in the separation of the politicians, in other words, the former political authorities, military personnel and militiamen, from the rest of the refugee and displaced population.

III. CONCLUSIONS AND RECOMMENDATIONS

49. In conclusion, the Special Rapporteur wishes to state that he deplores the tendency to use the current insecurity in Rwanda as a pretext for suggesting that genocide is commonplace and justifying inaction. To do so is to confuse cause and effect. It overlooks the fact that genocide is, to a great extent, at the origin of the insecurity.

50. A correct diagnosis is essential if the right medicine for the Rwandese sickness is to be prescribed. Without in any way neglecting existing human rights violations, they must be viewed in context and their sources identified so that efforts can be made to eliminate them before it is too late. Rapid, indeed very rapid, action is required if the international community is not to be the powerless spectator of a second war and further massacres.

51. It was in order to avoid a disaster of this nature that the Special Rapporteur made recommendations in his three reports, notably in document E/CN.4/1995/70 (chap. IV). These recommendations include the following:

Recommendation No. 1

The United Nations should require Rwanda and the countries which have accepted refugees to abide by their international commitments, particularly those deriving from the relevant provisions of the conventions relating to human rights, refugees and asylum.

Recommendation No. 2

The United Nations should, as soon as possible:

(a) Initiate the International Court for Rwanda which has been set up by the Security Council (resolution 955 (1994) of 8 November 1994), and also the local courts that are to be established in order to try persons charged with genocide, so as to stop, or at least reduce, acts of reprisals;

(b) Establish, first, an international force responsible for ensuring security in the camps for refugees and displaced persons, and secondly, arrangements for the repatriation of refugees and displaced persons in appropriate conditions of security and dignity.

Recommendation No. 3

The United Nations should formally and urgently appeal to Member States, particularly the major Powers and the African States, to provide:

(a) Substantial assistance in the reconstruction of the Rwandese State as a matter of urgency. Such assistance, which should take various forms and be provided in all economic, political, social and cultural sectors, presupposes a prior overall assessment of needs;

(b) Assistance with regard to judicial and law-enforcement personnel, including the training of policemen, gendarmes and judges, while helping local judges to render justice. In this connection, the United Nations might expand the Special Rapporteur's mandate to include technical assistance. Under this proposal, a specialized team of observers would be responsible for training policemen, judges, lawyers and court officers and establishing a Bar in order to safeguard the independence of the Judiciary.

Recommendation No. 4

In cooperation with the Organization of African Unity, the United Nations should take steps to:

(a) Create conditions and a framework for a dialogue between the various Rwandese political groups both inside and outside the country. This dialogue might lay the foundations for a political settlement of the conflict in place of a military settlement;

(b) Convene an international conference on Rwanda designed, as initially recommended in the interim report, to induce the parties to the conflict to negotiate in good faith, taking due account of the Arusha Agreements of 4 August 1993, the conditions for peace, democratic transition, and national reconciliation and unity.